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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

No. 82-21

ROBERT M. CARSWELL, JR.
Petitioner,

v.

JOHN M. MILGRIM,
DENNIS HILL
and
W. H. BERGER
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

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August 6, 1982

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

Respondents John M. Milgrim, Dennis Hill and W. H. Berger, by and through their counsel, respectfully request that this Honorable Court deny the petition for writ of certiorari seeking review of the ruling of the Supreme Court of Virginia in this case.

OPINIONS BELOW

The order of the Circuit Court of Fairfax County, Virginia, is printed as Appendix A hereto.

The order of the Supreme Court of Virginia is printed as Appendix B hereto.

JURISDICTION

On March 17, 1982, the Supreme Court of Virginia entered judgment refusing petitioner's Petition for Appeal.

Despite the fact that petitioner seeks certiorari review of a decision of the Supreme Court of Virginia, petitioner seeks to invoke the jurisdiction of this Court under Title 28, United States Code § 1254 (Petition for Writ of Certiorari, p. 2). It is respectfully submitted that this Court has no jurisdiction under Title 28, United States Code § 1254 to review a decision of the Supreme Court of Virginia since the statutory jurisdiction invoked by petitioner only allows this Court to review decisions of federal appellate courts.

CONSTITUTIONAL PROVISION INVOLVED

Respondents respectfully submit that no constitutional issues were properly brought before either the

Circuit Court of Fairfax County, Virginia, or the Supreme Court of Virginia by the petitioner.

STATEMENT OF THE CASE

Petitioner, Robert M. Carswell, Jr., filed a "Complaint for Damages Caused by Abuse of Power" on November 24, 1980, seeking $20,000 in damages from John M. Milgrim, Dennis Hill and W. H. Berger, employees of the Fairfax County Health Department, for certain actions they allegedly had taken with regard to Carswell after they had granted Stephen S. Murray a potable water well permit. Murray, a private citizen, and Nancy K. Falck, a member of the Board of Supervisors of Fairfax County, were also joined as parties defendant in Carswell's suit.

On December 19, 1980, defendant Murray filed a demurrer, which was overruled by an order entered January 23, 1981. Defendant Murray filed an answer to Carswell's "Complaint" on January 26, 1981.[1/]

Milgrim, Hill and Berger jointly interposed a demurrer to Carswell's "Complaint" and subsequently

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[1/] Carswell non-suited his claim against Murray and renewed his suit against Murray on June 9, 1982, prior to filing his petition with this Court. (See Petition for Writ of Certiorari, p. 2).

Carswell's suit was dismissed as to defendant Falck by an order entered March 23, 1981, a ruling which is not now challenged by Carswell.

filed an amended demurrer and plea in bar on December 23, 1980. The amended demurrer of Milgrim, Hill and Berger was sustained by an order entered February 23, 1981, which also granted Carswell leave to amend his "Complaint" as to those defendants. Carswell filed a "Second Amended Complaint for Damages Caused by Abuse of Power" on January 30, 1981.[2/] Milgrim, Hill and Berger jointly filed a demurrer and plea in bar to Carswell's "Second Amended Complaint" on February 20, 1981. This demurrer of Milgrim, Hill and Berger was based upon several grounds: 1) The defendants were immune from tort suits due to sovereign immunity; 2) Carswell failed to allege compliance with mandatory claims procedures set out in the Virginia Code for employees of the Commonwealth; 3) The "Second Amended Complaint" failed to clearly inform the defendants of the true nature of Carswell's claim; 4) Carswell's allegations did not state a cause of action in that he had not alleged that the defendants had tortiously inflicted any physical injury upon his person or property; 5) Carswell's suit sought damages for mental and emotional distress without alleging any physical injury and without complying with the requirements set forth in Womack v. Eldridge, 215 Va. 338,

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[2/] Carswell's "Second Amended Complaint" is printed as Appendix C hereto.

210 S.E.2d 145, 148 (1974); and 6) Milgrim, Hill and Berger owed no legal duty to Carswell.[3/] This jointly filed demurrer of Milgrim, Hill and Berger was sustained in its entirety and Carswell's "Second Amended Complaint" was dismissed by an order entered on April 8, 1981, by the Circuit Court of Fairfax County, Virginia, Judge Burch Millsap presiding.

Carswell filed a Petition for Appeal with the Supreme Court challenging the April 8, 1981, ruling of the Circuit Court.

On March 17, 1982, the Supreme Court refused Carswell's Petition for Appeal, and he subsequently filed his Petition for Writ of Certiorari with this Court.

REASONS FOR DENYING THE WRIT

I. THIS COURT HAS NO JURISDICTION UNDER 28 U.S.C. § 1254 TO REVIEW A JUDGMENT OF THE SUPREME COURT OF VIRGINIA.

Petitioner seeks to invoke the jurisdiction of this Court under 28 U.S.C. § 1254. (Petition for Writ of Certiorari, p. 2).

It is respectfully submitted that this Court has no jurisdiction under 28 U.S.C. § 1254 to review a judgment of the Supreme Court of Virginia since that provision

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[3/] The jointly filed demurrer of Milgrim, Hill and Berger is printed as Appendix D hereto.

only grants this Court jurisdiction to review decisions of the federal courts of appeals.

II. THE PETITION FOR WRIT OF CERTIORARI DOES NOT PROPERLY DRAW INTO QUESTION THE VALIDITY OF ANY STATE STATUTES OR COUNTY ORDINANCES NOR DOES IT SPECIALLY SET UP OR CLAIM A TITLE, RIGHT, PRIVILEGE OR IMMUNITY UNDER THE CONSTITUTION OF THE UNITED STATES.

The suit filed by Carswell in the Circuit Court of Fairfax County, Virginia, was simply a suit for damages based on Virginia law. Carswell's pleadings in the lower court make no mention of any constitutional right which allegedly has been violated or of a statute or ordinance which was claimed to be unconstitutional. (Appendix C). The Circuit Court of Fairfax County dismissed Carswell's suit, relying on numerous arguments based on Virginia law raised by Milgrim, Hill and Berger in their jointly filed demurrer. The court below found that based on Virginia law, Carswell's pleadings failed to state a cause of action. (Appendix A).

In his Petition for Appeal filed with the Supreme Court of Virginia, Carswell claimed for the first time that he had been denied due process of law. Such arguments had not been raised in the lower court and were not supported by the record. The Supreme Court of Virginia will not, on an inadequate record, entertain

such arguments for the first time on appeal. Newlon v. City of Alexandria, 213 Va. 336, 193 S.E.2d 6 (1972).

Assuming, arguendo, that the petitioner seeks to invoke the jurisdiction of this Court under 28 U.S.C. § 1257, his petition still should be denied. Under 28 U.S.C. § 1257, this Court has jurisdiction to review a judgment of the Supreme Court of Virginia "[b]y writ of certiorari...where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution...of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution...of...the United States."

The federal questions petitioner now seeks to have adjudicated by this Court were not raised in the Fairfax County Circuit Court and, since they were not properly before the Supreme Court of Virginia, could not have been decided by that court. Accordingly, petitioner has not properly "drawn in question" any state statute or county ordinance and has not "specially set up or claimed" a title, right, privilege or immunity under the Constitution of the United States.

This Court is vested with no jurisdiction unless a federal question was raised and decided in the state court below. Cardinale v. Louisiana, 394 U.S. 437, 438 (1969). Upon application to this Court for review of a state court judgment, it is the petitioner's burden to show affirmatively that this Court has jurisdiction.

Gorman v. Washington University, 316 U.S. 98, reh'g denied 316 U.S. 711 (1942). In the case at bar it is clear that the petitioner has not met his burden of showing affirmatively that this Court has jurisdiction.

III. THE JUDGMENT OF THE SUPREME COURT OF VIRGINIA IS BASED ON NONFEDERAL GROUNDS ADEQUATE TO SUPPORT THE JUDGMENT.

It was the judgment of the Circuit Court of Fairfax County that Carswell's pleadings failed to state a cause of action under Virginia law. Carswell has attempted to continue this legal controversy by representing to this Court that such ruling was a denial of due process and that various Fairfax County ordinances are unconstitutional. (Petition for Writ of Certiorari, pp. i and 6).

The jointly filed demurrer of Milgrim, Hill and Berger, which was sustained by the court below to dismiss Carswell's suit, raised numerous grounds, each of which were sustained when the court ruled that Carswell had failed to state a cause of action. (Appendices A and D).[4/]

The only relief requested by Carswell from the defendants was monetary damages. Implicit in

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[4/] It should be noted that Carswell had been given leave to amend his "Complaint" prior to the Circuit Court's final ruling in this matter. (Appendix A).

Carswell's petition is the assertion that the failure of Virginia law to provide him with monetary reparations is a violation of his constitutional rights. Such an assertion is without merit, and the Supreme Court of Virginia's conclusion that Carswell had not stated a cause of action is clearly a ruling on nonfederal grounds adequate to support the judgment that no cause of action had been stated in the pleadings.

This Court has stated consistently that it will not review a state court judgment based upon an adequate and independent state ground. Murdock v. Memphis, 20 Wall. 590, 636 (1875); Fox Film Corp. v. Muller, 296 U.S. 207, 210 (1935). In the case at bar, each of the grounds stated in the demurrer sustained by the Fairfax County Circuit Court is adequate to support the judgments of the courts below. (Appendix D).

IV. PETITIONER NEVER RAISED QUESTION PRESENTED #2 BEFORE THE SUPREME COURT OF VIRGINIA.

Petitioner's only assignment of error before the Supreme Court of Virginia was stated as follows:

> Carswell objected to the order sustaining the demurrer with prejudice (8 April 1981), thus assigning this order as error and preserving his right to appeal this error. The lower court erred in sustaining that demurrer.

The "Questions Involved" stated by petitioner to the Supreme Court of Virginia were:

> 1. Does the complaint state a cause of action against Milgrim, Hill and Berger?
>
> 2. Has Carswell been denied due process of law by the lower court's sustaining the demurrer in question?

It is clear that Question Presented #2 as stated to this Court by petitioner was never an issue cognizable by the Supreme Court of Virginia. Rule 5:21 of the Rules of the Supreme Court of Virginia provides, in pertinent part, that "[o]nly errors assigned in the petition for appeal will be noticed by this Court and no error not so assigned will be admitted as a ground for reversal of a decision below."

Since the issues raised by petitioner in his Question Presented #2 were never raised before the courts below, he is now precluded from raising such issues before this Court. Cardinale v. Louisiana, 394 U.S. 437, 438 (1969); Hill v. California, 401 U.S. 797, 805 (1971).

V. THE PETITION DOES NOT RAISE ANY IMPORTANT ISSUES AND AN ADJUDICATION BY THIS COURT WOULD NOT AFFECT ANYONE BUT THE PARTIES IN THIS CASE.

Notwithstanding the jurisdictional arguments set forth previously, it is clear that the petition for writ of certiorari does not raise any new or important issues

which would warrant consideration by this Court. Furthermore, it should be noted that an adjudication of the issues raised by the petitioner would not affect anyone but the parties in this case.

Respondents do not intend to present any arguments regarding the substantive merits of the petition for writ of certiorari unless they are requested to do so by this Court.

CONCLUSION

Respondents pray that this Honorable Court deny petitioner's Petition for Writ of Certiorari on the grounds heretofore stated.

GERALD L. BALILES
Attorney General

DAVID T. STITT
County Attorney

CYNTHIA V. BAILEY
Assistant Attorney General

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4100 Chain Bridge Road
Fairfax Virginia 22030
Telephone: (703)691-2421
Counsel of Record for Respondents

August 6, 1982

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

ROBERT M. CARSWELL, Jr.,
Plaintiff

vs. AT LAW NO. 51360

STEPHEN S. MURRAY, ET AL,
Defendants.

THIS CAUSE CAME ON to be heard on this 8th day of April, 1981, upon the Pleas in Bar and Demurrers filed by Defendants, John M. Milgrim, Dennis Hill and W. H. Berger, and

IT APPEARING TO THE COURT, after reviewing the pleadings authorities and arguments of the parties in connection with the Pleas in Bar and Demurrers filed February 20, 1981, by Defendants, Milgrim, Hill and Berger, that Plaintiff has failed to state a cause of action as to Defendants, Milgrim, Hill and Berger; and

IT FURTHER APPEARING TO THE COURT that Plaintiff had previously been given leave to amend, it is hereby

ADJUDGED, ORDERED and DECREED that the Demurrers filed by Defendants Milgrim, Hill and Berger are sustained and that Plaintiff's Second Amended Complaint for Damages Caused by Abuse of Power is dismissed, with prejudice, as to Defendants, Milgrim, Hill and Berger.

THIS CAUSE IS CONTINUED.

ENTERED this 8th day of April, 1981.

/s/
Burch Millsap, Judge

SEEN AND OBJECTED:

/s/
Robert M. Carsell, Jr.

WE ASK FOR THIS:

/s/
David T. Stitt
By: J. Patrick Taves
Assistant Attorney for the County
Co-Counsel for Defendants
Milgrim, Hill and Berger

/s/
R. Leondard Vance
Assistant Attorney General
Co-Counsel for Defendants
Milgrim, Hill and Berger

SEEN:

/s/
Roger Sanders
Counsel for Stephen Murray

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday ths 17th day of March, 1982.

Robert M. Carswell, Jr., Appellant,

against Record No. 811116
Circuit Court No. L-51360

John M. Milgrim, et al., Appellees.

From the Circuit Court of Fairfax County

Finding no reversible error in the judgment complained of, the court refuses the petition for appeal filed in the above-styled case.

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

ROBERT M. CARSWELL, Jr.
1175 Ballantrae Lane
McLean, Virginia 22101

Plaintiff

v.

STEPHEN S. MURRAY
855 Dolley Madison Boulevard
McLean, Virginia 22101

JOHN M. MILGRIM
c/o Fairfax Co. Health Department
4080 Chain Bridge Road
Fairfax, Virginia 22030

LAW # 51360

DENNIS HILL
c/o Fairfax Co. Health Department
4080 Chain Bridge Road
Fairfax, Virginia 22030

W. H. BERGER, R.S.
c/o Fairfax Co. Health Department
4080 Chain Bridge Road
Fairfax, Virginia 22030

Mrs. NANCY K. FALCK, Supervisor
1437 Balls Hill Road
McLean, Virginia 22101

Defendants

SECOND AMENDED
COMPLAINT FOR DAMAGES CAUSED BY ABUSE OF POWER

Plaintiff respectfully states to the Court the following:

1. Plaintiff is and has been a resident of Fairfax County since May 1962. His present address, since April 1972, is 1175 Ballantrae Lane, McLean, Virginia 22101, where his residence is located.

2. Defendant MURRAY, apparently a land developer t/a McLean Builders, an unregistered fictitious name, is aresident (sic) of Fairfax County since at least 1976, and he now resides at 855 Dolley Madison Boulevard, McLean, Virginia 22101; Defendants MILGRIM, HILL and BERGER are all officers, employees and agents of the Commonwealth of Virginia and/or Fairfax County, as follows - MILGRIM is a sanitarian employed at the Fairfax County Health Department; HILL is a senior sanitarian employed at the Fairfax County Health Department; and BERGER is a senior sanitarian with the title of Supervising Sanitarian, Environmental Services Section, Fairfax County Health Department.

3. Defendant MURRAY, who knowingly installed a potable water well mentioned in the following paragraph in violation of Section 70-1-11 of the Fairfax County Code with the approval of Defendants MILGRIM and BERGER, did knowingly procure, aid and abet and participate in the act constituting abuse herein sued upon in that, on or about 26 March 1980 he, in concert with Defendant MILGRIM, made the initial unfounded complaint to the Fairfax County Health Department of an alleged malfunction of the septic system serving Plaintiff's residence at the address stated above.

4. On or about 7 April 1980 and thereafter, Defendants MILGRIM, HILL and BERGER intentionally, unlawfully, wrongfully and without cause, and for an improper purpose, and by wilful and intentional abuse of their authority and power as officers, employees and agents of Fairfax County and/or the Commonwealth of Virginia did knowingly misuse the power and authority of the Health Department of said County in that without justification and solely on the basis of Defendant MURRAY's unfounded complaint mentioned in Paragraph 3 above, they vexed, harrassed and annoyed Plaintiff by (a) at various times visiting the site of the septic system serving his residence, by (b) making apparent but unscientific "tests" and probings in the soil of Plantiff's land, by (c) causing him to expend monies to have the septic tank pumped out and to have the distribution box of said septic system dug out and uncovered and then filled in and covered, by (d) causing him to lose time and/or income from his domestic and international law practice, including loss of various prospective clients whose cases he could not accept because of the time he has had to expend on the defense of his rights and interests from this abuse of power by said Defendants, including being present at the activities of the Defendants mentioned herein and at meetings with Defendants HILL and MILGRIM and Defendants HILL and BERGER, and by (e) sending him unjustified communications requiring that Plaintiff take

certain actions; all based on their unfounded and unproven claim that Plaintiff's septic system was and is in malfunction, all as part of their efforts to force Plaintiff, without cause in fact and without justification to cease and desist from using said septic system serving his residence; and said Defendants have committed and are committing all these acts under color of their office for the unlawful and improper purpose of hiding the negligent act of Defendants MILGRIM and BERGER in granting to Defendant MURRAY a permit in October 1979 to relocate a potable water well, denominated as "Well #1" in the official records of the Fairfax County Health Department, on his Lot 32-D adjoining Plaintiff's septic drainfields at a point known to Defendant MURRAY to be closer to said drainfields at a point known to Defendant MURRAY to be closer to said drainfileds than is permitted by Section 70-1-11 of the Code of Fairfax County and by the express terms of the permit itself, which fact Defendants MILGRIM, HILL and BERGER knew or should have known from documents reposing in the official records of the Fairfax County Health Department.

5. Plaintiff wrote to Defendant FALCK on 23 June 1980, fully informing her of the acts of Defendants MURRAY, MILGRIM, HILL and BERGER and requesting her assistance in finding a satisfactory solution to the situation created by these acts. On 2 July 1980 the full merits of Plaintiff's case were discussed at

a meeting in Defendant FALCK's office, at which Defendants HILL and BERGER were also present. At this meeting Defendant FALCK was asked to act on the merits, based on the facts presented, and to correct the unjust and unwarranted actions taken by Defendants MILGRIM, HILL and BERGER. No reply having been received, Plaintiff again wrote to Defendant FALCK on 19 August 1980 concerning this same matter. He received a reply signed by Defendant FALCK dated 3 October 1980, adhering to and accepting the position of Defendants MILGRIM, HILL and BERGER. Plaintiff again wrote to Defendant FALCK on 7 October 1980 concerning this matter, and received a reply signed by said Defendant dated 9 October 1980, in which said Defendant adhered to and accepted the position of the three Defendants, HILL, MILGRIM and BERGER. Defendant FALCK did by her letters of 3 and 9 October 1980, respectively, adopt and ratify the acts of the other Defendants herein complained of.

6. As a result of the said acts of the five (5) Defendants named herein, Plaintiff has suffered damages such as but not limited to (1) out of pocket payments relating to the septic tank and the distribution box work required by Defendants; (2) filing and service fees of this case, and expenses for copies of documents, postage and transportation; (3) time and/or income lost from the Plaintiff's private practice of domestic and international law in preparing this case

from 7 April 1980, and in court appearances; (4) loss of clients due to the time required by this case in defending his rights and interests; (5) and special damages arising from the vexation, harrassment and annoyance and inconveniences caused by Defendants in their efforts as described above. The damages herein indicated and claimed for against the Defendants, jointly and severally, amount to $5,000 (Five Thousand Dollars).

7. All of the Defendants, jointly and severally, by the actions above stated have caused Plaintiff humiliation, anxiety and mental pain and suffering, placing him in a false light before his neighbors in a prestigious neighborhood, thereby injurying Plaintiff in his good name and reputation, by reason whereof Plaintiff demands exemplary and punitive damages in the sum of $15,000 (Fifteen Thousand Dollars).

WHEREFORE Plaintiff prays for judgment in the sum of $20,000 (Twenty Thousand Dollars) against the Defendants jointly and severally, together with Court costs, and for such other relief as to the Court may seem just.

/s/
ROBERT M. CARSWELL, JR.
Plaintiff - Pro se

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Second Amended Complaint was mailed, postage prepaid, to Roger Sanders, Esq., Counsel for Stephen Murray, 6870 Elm Street, Suite 200, McLean, Virginia 22101, and to J. Patrick Taves, Esq., Assistant County Attorney, 4100 Chain Bridge Road, Fairfax, Virginia 22030, this 30th day of January 1981, as Counsel for Mrs. Nancy K. Falck.

/s/
ROBERT M. CARSWELL, JR.

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

ROBERT M. CARSWELL, JR.	:	
	:	
Plaintiff	:	
	:	
v.	:	AT LAW NO.
	:	51360
	:	
STEPHEN S. MURRAY, et al.	:	
	:	
Defendants.	:	

PLEA IN BAR

COMES NOW defendants John M. Milgrim, Dennis Hill and W. H. Berger, by counsel, and plea in bar to the Second Amended Complaint for Damages Caused by Abuse of Power on the following grounds:

1. The Fairfax County Health Department is operated under a contract with the State Board of Health.

2. Every employee of the Fairfax County Health Department is an employee of the Commonwealth of Virginia. See Va. Code § 32.1-31(E) (Repl. Vol. 1979).

3. Defendants Milgrim, Hill and Berger, employees of the Commonwealth, are immune from liability in tort suits under the doctrine of sovereign immunity.

4. Plaintiff has not complied with the mandatory claims procedure set forth in Va. Code §§ 2.1-223.1 (Repl. Vol. 1979), et seq., and Va. Code §§ 8.01-192, et seq. (Repl. Vol. 1977) for employees of the Commonwealth.

DEMURRER

COMES NOW defendants John M. Milgrim, Dennis Hill and W. H. Berger, by counsel, and demur to plaintiff's Second Amended Complaint for Damages Caused by Abuse of Power on the following grounds:

1. Defendants Milgrim, Hill, and Berger, employees of the Commonwealth, are immune from suits for torts under the doctrime of sovereign immunity.

2. Plaintiff fails to allege compliance with the mandatory claims procedure set forth in Va. Code §§ 2.1-223.1, et seq. (Repl. Vol. 1979), and Va. Code 8.01-192, et seq. (Repl. Vol. 1977), for employees of the Commonwealth.

3. The Second Amended Complaint is insufficient in that it does not clearly inform defendants Milgrim, Hill and Berger of the true nature of plaintiff's claim. Rule 1:4(d).

4. Plaintiff's Second Amended Complaint fails to state a cause of action as to defendants Milgrim, Hill and Berger. The Second Amended Complaint is deficient in that there is no allegation that defendants Milgrim, Hill and Berger tortiously inflicted any physical injury upon plaintiff's person or property.

5. Furthermore, the Second Amended Complaint appears to seek damages for mental and emotional distress without any physical injury being alleged. In order for a cause of action to lie for such distress, four elements must be shown: (1) The wrongdoer's conduct

must be intentional or reckless; (2) The conduct must be outrageous and intolerable in that it offends against the generally accepted standards of decency and morality; (3) There must be a causal connection between the wrongdoer's conduct and the emotional distress; and (4) The emotional distress must be severe. Womack v. Eldridge, 215 Va. 338, 210 S.E.2d 145, 148 (1974). The Second Amended Complaint fails to state facts against defendants Milgrim, Hill and Berger which would satisfy the four elements set forth in Womack.

6. Defendants Milgrim, Hill and Berger owed no legal duty to plaintiff.

Respectfully submitted,

John M. Milgrim,
Dennis Hill and
W. H. Berger

By /s/
Counsel

DAVID T. STITT
COUNTY ATTORNEY

By /s/
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James E. Moore
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/s/
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Assistant Attorney General
715 Madison Building
109 Governor Street
Richmond, Virginia 23219
Co-counsel for Defendants
Milgrim, Hill and Berger

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed, postage prepaid, to Robert M. Carswell, Jr., Plaintiff, 1175 Ballantrae Lane, McLean, Virginia 22101 and to Roger Sanders, Esquire, Counsel for Stephen Murray, 6870 Elm Street, Suite 200, McLean, Virginia 22101, this 20th day of February, 1981.

/s/
J. Patrick Taves